

ICDPPC Global Privacy and Data Protection Awards

2018

Entry Form

Deadline 29 June 2018

To submit an entry to the ICDPPC Global Privacy and Data Protection Awards please complete and email this form to ExCoSecretariat@icdppc.org no later than 29 June 2018.

Note: ICDPPC member authorities can submit as many entries as they wish but a separate form should be used for each different entry. Please complete the entry in English.

1. Contact details for this entry:

- a. Name and email address of person completing this form:
- b. Name of Data Protection or Privacy Authority: European Data Protection Supervisor

2. Eligibility: By submitting this entry I confirm that:

- a. The Authority is a member of the International Conference of Data Protection and Privacy Commissioners.
- b. The initiative described in this entry was undertaken since the last edition.
- c. I am aware that the information in the entry (other than the contact details in 1(a) above) will be publicised by the ICDPPC Secretariat.

3. Please indicate which **category or categories you wish to enter (delete those that do not apply; you can enter multiple categories):**

- a. Education and public awareness
- b. ~~Accountability~~
- c. ~~Dispute resolution and enforcement~~
- d. ~~Innovation~~
- e. ~~People's Choice~~

4. Description of the initiative

- a. Please provide a brief summary of the initiative (no more than 75 words):

Assessing the necessity of measures that limit the fundamental right to the protection of personal data: A Toolkit (Necessity Toolkit)

The toolkit aims to help the European legislators to better assess the necessity of new legislative measures that might limit the right to data protection and other fundamental rights such as the right to privacy. The Necessity Toolkit provides for an extremely practical step-by-step checklist, by specifying the criteria for the application of the necessity principle.

- b. Please provide a full description of the initiative (no more than 350 words):

Necessity Toolkit

Policymakers are increasingly required to quickly respond to serious public security challenges and keep up with developments related to the digital economy or international trade, together with the need to ensure that the respect for fundamental rights and other rights, such as the right to privacy, are respected. The toolkit deals with the principle of necessity which is central for the limitation of fundamental rights to be lawful. It calls for an application of the necessity principle based on an evidence approach.

The toolkit consists of a four-step check list:

- 1: The obtainment of a “detailed factual description” of the policy and its purpose;
- 2: The identification of what fundamental rights are limited by the processing of personal data;
- 3: The defining of the policy objective that should be assessed against the necessity;
- 4: The choice of the most effective and yet least intrusive policy.

The last two steps are a further explanation of the evidence-based policy making process.

Each step is detailed in guidance relating to the legal content at stake, how to proceed in the analysis and what to do according to the analysis’ outcome. The Toolkit also inserts examples from case-law from the Court of Justice of the European Union, the European Court of Human Rights, previous opinions from the EDPS and Article 29 Working Party, all of which illustrating every step and guaranteeing an easy review.

The check-list is accompanied by a legal assessment of important aspects such as what constitutes a limitation to the right of protection of personal data, how the necessity principle differs from the appropriateness and proportionality of a measure, when the right is emptied of its basic content and thus an assessment of necessity is not deemed necessary.

The toolkit follows a background paper issued in 2016 for public consultation. At the moment, the Toolkit is available in English, French and German, but translations into the remaining EU official languages are ongoing.

- c. Please explain why you think the initiative deserves to be recognised by an award (no more than 200 words)

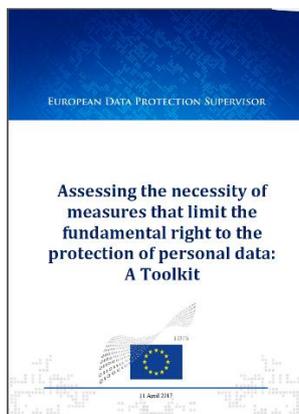
This initiative has already been submitted last year. However, given the important acknowledgment the toolkit has received since its publication (which occurred a few days before the submission), the EDPS has considered to re-submit the initiative.

The necessity toolkit is the first of its kind in providing help for EU legislators when evaluating the compliance of new legislative measures. It provides for practical and step-by-step guidance on the necessity principle’s application by EU legislators when any new law involves the processing of personal data. It also highlights the complexity of other notions such as the appropriateness and proportionality of a measure, and contributes to distinguish them.

The toolkit can also be used by national legislators within the EU and beyond, as the principle of necessity is enshrined in many national legal frameworks. Moreover, national data protection authorities could make use of the toolkit when providing advice to national legislators on measures which could undermine the right to the protection of personal data.

Therefore, the toolkit not only is a compliance, but also an educational tool. It also majorly contributes to creating public awareness, by practically exemplifying the utility of the necessity principle’s application to the law making process.

- d. Include a photograph or image if you wish (note this will help illustrate the description of the entry on the ICDPPC website; the image can be pasted into the entry or send as an attachment or a link may be provided):



- e. Please provide the most relevant link on the authority's website to the initiative (if applicable) (The website content does not need to be in English):
- https://edps.europa.eu/sites/edp/files/publication/17-04-11_necessity_toolkit_en_0.pdf ;
 - https://edps.europa.eu/press-publications/press-news/press-releases/2017/privacy-friendly-policy-making-made-easier-edps_en
- f. Please provide any other relevant links that you wish that help explain the initiative or its impact or success (e.g. links to news reports or articles):

<http://fra.europa.eu/en/publication/2018/handbook-european-data-protection-law>. References to the Necessity Toolkit can be found in pages 43, 46, 48, 49, 52 and 184 of the **Handbook on Data Protection Law 2018**, in the context of limitations under the EU Charter of Fundamental Rights, interaction with other rights and legitimate interests and data protection by default;

http://ec.europa.eu/newsroom/just/document.cfm?doc_id=48804: **Article 29 WP Opinion on some key issues of the Law Enforcement Directive (EU/2016/680)**. 'As for an excursus on the application of these two principles within the law enforcement sector, see WP 29 Opinion 01/2014 on the application of necessity and proportionality concepts and data protection within the law enforcement sector, WP 211, 27 February 2014 and, more in general, for a useful "toolkit" to assess necessity and proportionality of a legal measure, see European data Protection Supervisor (EDPS), *Assessing the necessity of measures that limit the fundamental right to the protection of personal data – A Toolkit*, 11 April 2017.' ;

<https://pdpecho.com/2017/04/24/summary-of-the-opinion-of-ag-kokott-in-puskar-on-effective-judicial-remedies-and-lawful-grounds-for-processing-other-than-consent/>

The AG remarks that the reference for a preliminary ruling does not specify the purpose of the contested list and leaves it to the Supreme Court to look further into this question (§107). Additionally, the AG also considers that the Supreme Court "will have to examine whether the creation and use of the contested list and in particular the naming of Mr Puškár is **necessary** for the claimed public interest". This is yet another reminder how important "necessity" is for personal data protection in the EU legal framework (check out EDPS's recently published "Necessity Toolkit");

<https://www.lexology.com/library/detail.aspx?g=b636d2fb-cda7-4fad-a366-1eb878506e8c> ;

<https://iapp.org/news/a/edps-releases-privacy-friendly-toolkit-for-policymakers/> ;

<https://iapp.org/news/a/notes-from-the-iapp-europe-managing-director-14-april-2017/> ;

<https://www.wired-gov.net/wg/news.nsf/articles/Privacyfriendly+polycymaking+made+easier+EDPS+issues+the+necessity+toolkit+13042017151515?open> ;

<https://www.bna.com/analyzing-threats-fundamental-b57982086731/> ;

https://twitter.com/m_opris/status/743814116905787392 ;

<http://www.tribuna.com/aas/it/2015-07-20-13-01-43/inglesefrancese-m/64642-privacy-friendly-policy-making-made-easier-edps-issues-the-necessity-toolkit.html> ;

<http://www.cugiacuomo.it/assessing-the-necessity-of-measures-that-limit-the-fundamental-rights-to-the-protection-of-personal-data/news/79/2017/4/18> .